IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No. 328 of 2001

Makkhan Singh Vs. State

Date of decision:- 23/3/06

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Date :- 23/3/06

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for Signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Appeal No. 328 of 2001
(Old No. 3146 of 1985)

Makkhan Singh
S/o Shyam Singh
R/o Railway Bazar
Police Station – Kichha
District – Udham Singh Nagar .....Appellant

Versus

State of Uttaranchal ....Respondent

Ms. Prabha Noliyal, learned counsel for the appellant
Shri Sudhir Kumar, learned A.G.A. for the State

Hon'ble J.C.S. Rawat, J.

This is an appeal against the judgment and order dated 26.10.1985 in Sessions Trial No. 105 of 1983 forfeiting the personal bond of Rs. 5000/- under the provisions of the Criminal Procedure Code of Makkhan Singh-appellant.

Brief facts of the disposal of this appeal are that trial was pending against the accused Gulam Sabir u/s 307 I.P.C., Session Trial No. 105 of 1983 State Vs. Gulam Sabir. The said accused was granted bail during the trial and Makkhan Singh-appellant stood surety for the accused Gulam Sabir. The accused did not appear before the court below on the date fixed. Thereafter notice was issued to the sureties. The appellant surety moved an application before the court below to allow him time to produce the accused. The appellant could not produce the accused. The appellant did not file any reply before the court below as to why he could not produce the accused and he did dot deposit the amount of the surety bond. The bond was forfeited and the recovery process was issued against the appellant.

Feeling aggrieved by the said order, the present appeal has been preferred.

It was contended on behalf of the appellant that the accused appeared before the court later on and he had been convicted by the court u/s 352 I.P.C. and as such the appellant is not liable to pay the amount. Learned A.G.A. refuted the contention and further contended that the accused did not appear before the court below inspite of the order of the court and the appellant could not produce the accused on the date fixed, as such, the sureties were correctly held liable to pay the surety amount. It was further contended that the sureties had not given any reply in response of the notice as such they cannot raise any fresh ground before this court. It was further contended that the accused could not be produced by the appellant on the date fixed when the order was passed for the forfeiture of the bond on 09.12.1985. Perusal of the record reveals that the case was fixed on 03.06.1985 and the accused was present on that date and thereafter the case was fixed for prosecution evidence on 10.07.1985. Perusal of the ordersheet reveals that the accused did not appear before the court and the court waited till 3:30 pm and when the accused did not appear, the court issued the warrants against the accused and notices to the sureties fixing the case for 25.07.1985. The appellant appeared on the date fixed, i.e., on 25.07.1985 and he prayed for one month time to produce the accused and again date was fixed for 26.08.1985 and the appellant was given time to produce the accused till 26.08.1985. Again the appellant moved application for seeking time on 26.08.1985 to produce the accused but the Presiding Officer was on leave on that date hence it was fixed on 20.09.1985 and the accused did not appear on the date fixed. Perusal of the record reveals that the accused could not be produced by the appellant on 20.09.1985. The court issued the non-bailable warrant against the accused and his bail was cancelled and order for forfeiture of surety bond was passed

and sureties were directed to deposit the amount or to show cause fixing the case for 26.10.1985. Thereafter the impugned order was passed. The accused surrender before the court on 04.11.1985. The perusal of the record clearly reveals that the appellant could not produce the accused on the date fixed as such he committed the default and he is liable to pay the amount which he had undertaken to pay in default of the accused. He cannot take the benefit of the appearance of the accused on 04.11.1985 before the court below.

It was further contended that on 25.07.1985 when the appellant was called upon to produce the accused in the court within a period of one month, the accused was also present before the court concerned and he moved the application for recalling the warrant issued against him but the court committed mistake by not taking him into custody. Therefore, there was no occasion for passing the impugned order for forfeiture of the bonds. The learned A.G.A. refuted the contention and he contended that it is no where revealed from the record that he personally appeared before the court below. His application was filed but whether he was personally appeared before the court below does not reveal from the record. If he was personally available, the sureties should have given an application to take him into custody and no such prayer was made by the appellant. Perusal of the record reveals that there is application with regard to the recall of the warrant but it is not proved that the accused was personally present before the court. It is also revealed that the court has not recalled the warrant issued against him. It is also revealed that the sureties did not move any application before the court that the accused was present in the court and he may be taken into custody. This fact clearly reveals that the date when the sureties were directed to produce the accused was not present in person. However, there are so many dates fixed and the accused did not appear before the court below not he was produced by the sureties and as such the sureties have committed the default. It is

also pertinent to mention here that they have not filed any objection against the forfeiture of bond before the court below.

It was further contended on behalf of the learned counsel for the appellant that in the bail bond executed before the court below with the condition imposed upon the appellant was to produce the accused Gulab Sabir only before the learned Magistrate. Since there was no undertaking on the part of the appellant to produce the accused before the court of Sessions, hence the impugned order dated 26.10.1985 is liable to be quashed. The learned A.G.A. refuted the contention. Perusal of the surety bond submitted by the appellant clearly reveals that in the bail bond executed before the court below, the condition imposed upon the appellant was to produce the accused before the court of Munsif Magistrate, Haldwani or Officer-in-Charge P.S. Kichha or any other court on each day on which any investigation or charges is made or any trial of such charges is held. This clearly indicates that the appellant had given the bond to appear before any court where the trial or the accused would be held. The contention raised by the learned counsel for the appellant has not merit.

In view of the forgoing discussion, I am of the view that the appeal is devoids of merit is liable to be dismissed and the same is accordingly dismissed.

(J.C.S. RAWAT, J.)

23rd March, 2006
Shiv